IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5859 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGANBHAI C PATEL

Versus

COMPETENT OFFICER & DEPUTY COLLECTOR

Appearance:

MR KB PUJARA for Petitioner

RULE SERVED for Respondent No. 1, 4

MR SN SHELAT for Respondent No. 2

MR PM RAVAL for Respondent No. 3

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: /12/2000

C.A.V. JUDGEMENT

This is the petition filed by a retired Agricultural Supervisory, who joined as an Agricultural

Assistant. After putting sincere service and earning promotions from time to time, the petitioner ultimately retired as Agricultural Supervisory on 31.7.1986. During his service, the petitioner was transferred to the office of the Superintendent Agricultural School, Model Farm, Vadodara on 22.4.1971, where the petitioner was allotted a Government accommodation by order dated 24.5.1971. Since then the petitioner was in possession of the said accommodation. The petitioner was transferred to Devgadh Baria on 10.3.1976, where he continued upto 10.10.1979. During this period the petitioner was issued a notice dated 23.6.1978 by the Competent Officer under sec.4 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 ("the Act" for brevity) to show cause as to why the order of eviction should not be made on the ground that the petitioner was transferred to Devgadh Baria.

2. The petitioner filed a reply to the notice on 26.10.1978. Ultimately the Competent Officer has dropped the eviction proceedings by his order dated 30.11.1978 as the quarter occupied by the petitioner was not covered by the provisions of the Act.

3. The petitioner was then transferred from Devgadh Baria to Santrampur; from there to Vejpur in Savli Taluka of Vadodara district. At the time of his retirement on 31.7.1986, the petitioner was at Vapi, where he was transferred from Vejpur. The case of the petitioner is that the petitioner was never brought back to Vadodara after 1976 and therefore, there was no question of the petitioner again being transferred from Vadodara and initiating proceedings on that ground once again. To the shock and surprise of the petitioner, respondent no.1 again initiated eviction proceedings under the Act on the same ground that the petitioner was transferred from Vadodara and was issued notice under sec.4 of the Act on 17.11.1983, a copy of which is at Annexure 'F' to the petition. The petitioner replied to the said show cause notice on 26.12.1983, but this time the authority did not drop the proceedings, but passed an order of eviction under sec.4 of the Act on 30.12.1983.

4. The petitioner being aggrieved of that order preferred an appeal before the District Judge, Vadodara under sec.9 of the Act, which has been dismissed by judgement dated 10.7.1990 wherein the learned Judge held that the Competent Authority was entitled to recover possession and rent as per the procedure laid down in the Act after 13.8.1990. It may be noted that while the appeal of the petitioner was pending before the District

Court, the District Court granted injunction in favour of the petitioner till final disposal of the appeal.

5. As set out in para 5 of the petition while the petitioner was occupying the quarter in question, the State Government by its letter dated 23.1.1973 prescribed a procedure for allotment and occupation of Government quarters. It requires to be specifically noted that the quarter occupied by the petitioner as a servant of the State Government was also transferred to the Gujarat Agricultural University, but as the petitioner was occupying the same as a Govt. servant, the University could not have recovered rent for the said quarter unless and until the petitioner vacated the quarter and thereafter it was allotted to a servant of the University. However, the University started recovering rent from the petitioner at the rate of 5% of the salary until the petitioner was transferred to Devgadh Baria. Thereafter, it is recovered at the rate of 10% of the salary per month as per order dated 14.2.1977. Said increase in rent was on account of the petitioner having been placed outside Vadodara. Thereafter, the University passed an order dated 17.11.1983 asking the petitioner to pay market rent at the rate of 378/-, per month with effect from 1.9.1983. However, the petitioner protested against the same and tendered the rent at the rate of 10% of the salary which was not accepted by the University.

6. The Sub Divisional Soil Conservation Officer, vide his letter dated 31.1.1986, informed the petitioner that his pension papers would not be prepared until the quarter is vacated and market rent is paid by the petitioner. However, ultimately order was made sanctioning the pension at Rs.446/-, per month. However, gratuity was withheld. Being aggrieved of that the petitioner was constrained to approach this Court. This Court granted interim injunction against disturbing his possession on the condition that the petitioner files an undertaking to vacate the premises by 31.12.1990. The petitioner filed such an undertaking on 13.8.1990 and vacated the premises on 31.12.1990.

7. Now the only relief which is required to be considered is about quashing of the order of eviction with recovery of market rent and payment of the petitioner's gratuity amount of Rs.14,932/-, which stands withheld from 31.7.1986 with interest at the rate of 12% per annum.

8. Shri Kaushik B. Pujara, learned advocate appearing for the petitioner invited attention of the

Court to ground (2) in the petition, which reads as under:

"(2) That as appears from the details given at Ann. 'E', the petitioner has served in the tribal areas from 10.3.76 till 31.7.86 (date of retirement) and, therefore, the petitioner was entitled to retain the Govt. accommodation allotted to him at Vadodara at the same rate of rent which he was paying prior to his posting in the tribal area as per clause 54 of the G.R. dtd.21.11.83 prescribing the Rules for letting and occupation of Govt. residences for the guidance of tenants, etc., the relevant extract whereof is annexed hereto and marked as Annexure 'C'. The respondent no.2 or other respondents, therefore, cannot recover market rent from the petitioner for the said period."

In the alternative, learned advocate also submitted that market rent at the rate of Rs.378/- determined as per Annexure 'L' which is purported to have been determined as per the rules and regulations of the University is arbitrary inasmuch as the same is determined without taking into consideration an important fact that the premises in question is more than 50 years old and is in dilapidated condition and it is a small unit of two rooms and kitchen. Besides that in view of the Govt. letter dated 23.1.1973 (Annexure 'J'), the University had no authority to recover rent from the petitioner much less rent at market rate. Learned advocate for the petitioner also contended that eviction proceedings under the Act initiated in the year 1983 were barred by res judicata inasmuch as earlier in the year 1978, the competent officer had rightly dropped the eviction proceedings against the petitioner holding that the quarter occupied by the petitioner is not covered under the provisions of the Act. Further, learned advocate for the petitioner invited attention to the contents of Annexure 'E' to the petition, wherefrom it is clear that the petitioner had been serving in a tribal area, except for the period from 1.10.1983 to 30.9.1985 and therefore in view of the Government Resolution dated 21.11.1983 (Annexure 'O' to the petition),

"The Govt. servant who has been transferred to the tribal area or sent on deputation or transferred and appointed to perform his duties upon the work relating to the natural calamities or the area affected by scarcity, flood earth quake, etc. should be allowed to retain Govt.

accommodation allotted to him for the period till he is relieved from such work. For this period the rent at the rate as was being paid by Govt. servant prior to his posting in such work should be recovered."

9. In view of the facts discussed hereinabove which are not controverted by the respondent authorities by filing any counter to this petition and in view of perusal of the contents at Annexure 'O' to the petition, the reliefs sought for are required to be granted by allowing the petition.

10. In the result the petition is allowed. Order of eviction dated 30.12.1983, Annexure 'H' to the petition, judgement and order dated 10.7.1990 passed by the District Court, Vadodara in Civil Appeal No.233 of 1984 and order dated 17.11.1983 levying market rent at Rs.378/-, per month is hereby quashed and set aside.

11. The respondents are directed to make payment of gratuity together with interest at the rate of 12% per annum from 31.7.1986 till the date of actual payment. The respondent are also directed to make payment within three months from the date of receipt of writ of this Court. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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